

## **RESTORED ANNUAL LEAVE**

### **Background**

The Office of Personnel Management has issued interim regulations to aid agencies and employees responding to the "National Emergency by Reason of Certain Terrorist Attacks" on the World Trade Center and the Pentagon. The regulations provide that employees who would forfeit excess annual leave because of their work to support the nation during the national emergency will be deemed to have scheduled their excess annual leave in advance. Such employees will be entitled to restoration of their annual leave under these regulations.

These interim regulations simplify the restoration of employees' forfeited annual leave and impose relaxed time limitations for using restored annual leave during this specific National Emergency.

Under these new regulations the time limits for restoration will be the same as currently used for Department of Defense employees in installations undergoing closure or realignment. Therefore, a full time employee will be required to schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee is no longer subject to the exigency of the public business created by the national emergency. The agency will extend that period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

A part-time employee will be required to schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject the exigency. The agency will extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

Some employees currently involved in the exigency created by the national emergency may have an "active" restored leave account. Since there is no authority to

restore previously restored annual leave, employees (and agencies) have little option but to use (or permit the use of) the leave in the "active" restored leave account to avoid the forfeiture of annual leave, even though the employees are needed for critical projects in connection with the national emergency. The interim regulations will alleviate this problem because the time limitation for using active restored annual leave will be **canceled** for the entire period during which employees' services are determined to be essential for activities associated with the national emergency. At the end of the national emergency, a new time limit will be established for using all restored leave available to the employee.

Employees who transfer from a position deemed necessary for the national emergency to another position during the latter portion of a leave year may still be unable to schedule their leave in excess of the maximum limitation. Agencies will be allowed to consider restoration of annual leave forfeited at the end of the leave year, to an employee whose involvement in the national emergency ends during the leave year, if the agency determines that there is a correlation between the lack of advance scheduling and the duties of the employee's former position. OPM's position is the affected employees should make a reasonable effort to comply with the advance scheduling requirement. The agency may exempt an employee from the advance scheduling requirement if the employee can show that he or she was involved in activities necessary to the national emergency during the leave year and was unable to comply with the scheduling requirement due to circumstances beyond his or her control.

#### **Procedures for the Human Resource Offices**

The Human Resource Office (HRO) shall furnish civilian payroll offices with listings at the end of each leave year. These listings will identify each employee who is eligible for restoration of annual leave under 5 C.F.R. 630.311, the "National Emergency by Reason of Certain Terrorist Attacks". The listing must include the heading just mentioned, the employee's name, social security number, employing agency, the amount of leave to be restored and the ending date of the national emergency, if known. If the ending date is not known, the Defense Civilian Pay System (DCPS) will set the restored leave account to terminate in three leave years (current year

plus two) using the date of the memorandum. If the national emergency continues through a subsequent year(s), the listings will continue to be provide to payroll containing the information as described above.

If an employee transfers into the agency and has been involved in the national emergency during the leave year, the gaining agency (HRO) will determine any entitlement to restoration of annual leave forfeited at the end of the leave year. The notification to payroll will be the same.

### **Payroll Procedures**

Upon receipt of these listings, the payroll office will input the restored leave balances into one of the restored leave accounts with an expiration date as determined above. Restored leave under this new regulation must be maintained in a separate account in order to keep its integrity. This restored annual leave is not included in, and does not increase, the maximum annual leave carryover for an employee.

If the employee currently has an "active" restored leave account(s) with an expiration date, the time limitation associated with those accounts will be cancelled while employees are performing services associated with the national emergency. This account(s) should be combined with leave to be restored due to the national emergency and a new expiration date determined as discussed above. This date will remain as the employees' forfeiture date unless notification is provided to change that date or when the employee appears on a subsequent restored leave listing due to the national emergency. The employee's active restored leave account(s) totals will be added to the additional hours provided on the listing and a new ending date will determined.

Again, the law requires that at the end of the national emergency, a new time limit be established, under CFR 630.311(c) for using **all** restored leave available to the employee under 5 U.S.C. 6404(d).